IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 21500 of 2007(H)

OA.235/2001 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

CATHOLIC SYRIAN BANK LIMITED,
MARKET ROAD BRANCH, ERNAKULAM,
REPRESENTED BY ITS CHIEF MANAGER.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS:

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1. P.G.ABHILASH, S/O.P.A.GANESH,
PROPRIETOR, M/S.SAGER WINES,
PALLATH HOUSE, ARANATTUKARA, THRISSUR DISTRICT.

2. SARALA GANESH, W/O.P.A.GANESH,
PALLATH HOUSE, ARANATTUKARA,
THRISSUR DISTRICT.

3. THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL,
ERNAKULAM.

*4. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT.

(*IMPLEADED AS ADDITIONAL 4TH RESPONDENT AS PER ORDER DATED 25/07/2007)

BY ADV. SRI.K.R.SUNIL
SRI.SUBRAMANIAN POTTI.R

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 21500/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE FINAL ORDER PASSED BY THE DEBT RECOVERY TRIBUNAL, ERNAKULAM IN O.A.NO. 235/2001 DATED 03/09/2004.

P2 : COPY OF THE COUTNER STATEMENT FILED BY THE PETITIONER DATED 22/05/2007.

P3 : COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER DATED 14/06/2007.

RESPONDENT'S EXHIBITS

R1 : COPY OF THE AGREEMENT FOR SALE EXECUTED BETWEENT THE 2ND RESPONDENT AND ROY VAYALAT DATED 17/05/2007.

R2 : COPY OF THE LETTER DATED 18/05/2007 SENT BY SHRI.ROY VAYALAT, VAYALAT ESTATES PVT.LTD., AND MANAGING DIRECTOR, MEADOW HOMES PVT. LTD., G-126, PANAMPALLY NAGAR.

R3 : COPY OF THE PROCEEDINGS SHEET ISSUED BY THE REGISTRAR, DEBT RECOVERY TRIBUNAL, ERNAKULAM DATED 25/07/2007 IN DRC NO.1758/2007.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 21500 of 2007

Dated, this the 20th day of September, 2007

J U D G M E N T

Heard learned counsel for petitioner, learned counsel appearing for respondents 1 & 2 and learned Government Pleader for the State. This writ petition is filed by the Bank alleging delay in sale of property by the Recovery Officer. Debt due to the Bank from the defaulter is Rs. 1.23 crores. However, learned counsel for the Bank submitted that Bank is willing to forego Rs. 16 lakhs and settle liability as Rs. 1.07 crores, if respondents 1 & 2 make payment and settle liability. Learned Government Pleader reported that an amount of above Rs. 7 lakhs is due to the State towards sales tax and State has priority in recovery proceedings. Learned counsel for the respondents 1 & 2 submitted that respondents 1 & 2 have offered reasonable settlement and Bank is blocking it by demanding exorbitant rate of interest including penal interest. Obviously, since loan availed in 1999-2000 was only for Rs. 48 lakhs, the present demand shows that interest charged is exorbitant. Respondents 1 & 2 have offered payment of Rs. 80 lakhs for settlement of liability and they have offered to settle sales

tax dues separately. I am of the view that it is for the Bank to take a practical approach by estimating the price the property will fetch if sold in auction and if there is risk of the property getting sold below Rs. 87 lakhs, to agree for the reasonable settlement offered by the debtor and allow sale of property by receiving Rs. 80 lakhs. In any case, it is for the Bank to decide and not for this Court to decide, whether the Bank should go for settlement in its own interest. However, if there is no settlement, 3rd respondent should sell the property without any delay and in that event, State dues should be first cleared and balance should be appropriated for arrears due to the petitioner-Bank.

This writ petition is disposed of with the above observation.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg